

Federal Communications Commission

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Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 93-95 ✓

In re Applications of

ERIC R. HILDING File No. BPH-911115MR  
(hereafter "Hilding")

JUDY YEP HUGHES File No. BPH-911115MT  
(hereafter "Hughes")

For Construction Permit  
for a New FM Station on Channel 281A  
in Windsor, California

**HEARING DESIGNATION ORDER**

Adopted: March 18, 1993;

Released: April 8, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Engineering Discrepancy.* On April 14, 1992, Hilding filed a petition to deny Hughes' application. Among the several allegations in his petition is Hilding's assertion that Hughes' proposed effective radiated power (ERP) of 0.25 kilowatts exceeds the maximum allowed power from the actual antenna site. Hughes proposes to locate her antenna atop Mount Jackson at the Kushnir/Empire Communications site. On April 27, 1992, Hughes filed an opposition to Hilding's petition to deny in which she contends that the ERP/HAAT combination is in compliance with the Commission's Rules and refers to an earlier construction permit (File No. BPH-860220IB) granted for Station KMGG(FM) which specifies the same site elevation and similar facilities as Hughes' application. On May 5, 1992, Hilding filed a reply to Hughes' opposition which includes a detailed survey map for the Kushnir/Empire Communications site on Mount Jackson. This survey map indicates that the site elevation is 499 meters instead of 488 meters as specified in Hughes' application. This would yield an antenna height above average terrain (HAAT) for Hughes' proposal of 348 meters instead of 337 meters. The allotment for Channel 281A at Windsor, California is an "old" Class A allotment and both applicants must satisfy the requirements of 47 C.F.R. § 73.213. An engineering study by the Commission staff indicates that this new HAAT value would produce a distance to the 1 mV/m (60 dBu) contour of 24.2 kilometers instead of 23.9 kilometers as would be produced by

Hughes' proposal. Since both distances round to 24 kilometers and the Commission has previously authorized similar facilities at the proposed site which specified the same site elevation as Hughes' proposal, neither HAAT value would cause Hughes' application to be unacceptable for filing. Accordingly, in light of the survey map submitted by Hilding, Hughes must amend her application to specify a site elevation of 499 meters.<sup>1</sup>

3. *Environmental.* The applicants propose to side-mount their FM antennas on an existing tower with other RF contributors. Pursuant to OST Bulletin No. 65, entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," when persons have access to the site, the transmitter power must be reduced or completely eliminated in order to comply with FCC guidelines. Furthermore, in situations like the applicants', where there are multiple contributors to radiofrequency radiation, all stations are required to reduce power or cease operations as necessary to assure safety with respect to radiofrequency radiation with regard to persons having access to the site. Accordingly, any subsequent grant will be subject to the following condition:

"The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency radiation in excess of FCC guidelines."

4. *Late-Filed Amendments.* Hilding petitioned for leave to amend his application on December 3, 1992. Hughes petitioned for leave to amend her application on April 29 and May 20, 1992. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

5. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. **ACCORDINGLY, IT IS ORDERED,** That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications **ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING**, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.
2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

<sup>1</sup> The remainder of the petition to deny is essentially a petition to specify issues. Since the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcasting Applications; Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202, 214-215 (1979), directed the deletion of all

issue pleadings in pending cases, the matters sought to be raised in these petitions have not been considered. Accordingly, an opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to Section 1.229.

7. IT IS FURTHER ORDERED. That, in accordance with note 1 hereinabove, the petition to deny filed on April 14, 1992 by Hilding IS DISMISSED.

8. IT IS FURTHER ORDERED. That Hughes shall submit the amendment, as specified in Paragraph 2 above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

9. IT IS FURTHER ORDERED. That, in accordance with Paragraph 3 above, in the event of grant of the Hilding or Hughes application, the construction permit shall contain the following condition:

"The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency radiation in excess of FCC guidelines."

10. IT IS FURTHER ORDERED. That the petitions for leave to amend filed by Hilding (12/3/92) and Hughes (4/29, 5/20/92) ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED. That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED. That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. See generally *Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

13. IT IS FURTHER ORDERED. That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of

the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau